

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT[605]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to amend Chapter 6, “Contested Cases,” Iowa Administrative Code.

These amendments are intended to implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department and to update the physical address of the Department.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before November 17, 2015. Such written materials should be sent to the Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324; fax (515)725-3260; or e-mail to john.benson@iowa.gov.

Also, there will be a public hearing on November 17, 2015, at 11 a.m. in the Department of Homeland Security and Emergency Management Cyclones Conference Room at 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Homeland Security and Emergency Management Department and advise of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 29C.

The following amendments are proposed.

ITEM 1. Amend rule 605—6.1(17A) as follows:

605—6.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the homeland security and emergency management ~~division~~ department.

ITEM 2. Amend rule **605—6.2(17A)**, definition of “Presiding officer,” as follows:

“*Presiding officer*” means the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department or the ~~administrator’s~~ director’s designee.

ITEM 3. Amend subrule 6.12(3) as follows:

6.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer as identified in the notice of hearing. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Homeland Security and Emergency Management ~~Division~~ Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa 50319 50324.

ITEM 4. Amend subrule 6.23(10) as follows:

6.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte

communication prohibitions by agency personnel shall be reported to the ~~administrator~~ director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

ITEM 5. Amend rule 605—6.24(17A) as follows:

605—6.24(17A) Recording costs. Upon request, the homeland security and emergency management division ~~department~~ shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

ITEM 6. Amend rule 605—6.25(17A) as follows:

605—6.25(17A) Interlocutory appeals. Upon written request of a party or on the ~~administrator's~~ director's own motion, the ~~administrator~~ director may review an interlocutory order of the presiding officer. In determining whether to do so, the ~~administrator~~ director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

ITEM 7. Amend rule 605—6.26(17A) as follows:

605—6.26(17A) Final decision.

6.26(1) When the ~~emergency management division administrator~~ director presides over the reception of evidence at the hearing, the ~~administrator's~~ director's decision is a final decision.

6.26(2) When the ~~emergency management division administrator~~ director does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the ~~emergency management division administrator~~ director within the time provided in rule 605—6.27(17A).

ITEM 8. Amend rule 605—6.27(17A) as follows:

605—6.27(17A) Appeals and review.

6.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the ~~emergency management division administrator~~ director within 30 days after issuance of the proposed decision.

6.27(2) Review. The ~~administrator~~ director may initiate review of a proposed decision on the ~~administrator's~~ director's own motion at any time within 30 days following the issuance of such a decision.

6.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the ~~emergency management division administrator~~ director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. to e. No change.

6.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The ~~administrator~~ director may remand a case to the presiding officer for further hearing, or the ~~administrator~~ director may preside at the taking of additional evidence.

6.27(5) Scheduling. The ~~emergency management division administrator~~ director shall issue a schedule for consideration of the appeal.

6.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The ~~administrator~~ director may resolve the appeal on the briefs or provide an opportunity for oral argument. The ~~administrator~~ director may shorten or extend the briefing period as appropriate.

ITEM 9. Amend subrules 6.28(3) and 6.28(4) as follows:

6.28(3) Time of filing. The application shall be filed with the ~~emergency management division administrator~~ director within 20 days after issuance of the final decision.

6.28(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the homeland security and emergency management division department shall serve copies on all parties.

ITEM 10. Amend rule 605—6.29(17A) as follows:

605—6.29(17A) Stays of agency actions.

6.29(1) When available.

a. Any party to a contested case proceeding may petition the ~~emergency management division administrator~~ director for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The ~~administrator~~ director may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the ~~emergency management division administrator~~ director for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.29(2) When granted. In determining whether to grant a stay, the presiding officer or ~~administrator~~ director shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

6.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the homeland security and emergency management division department or any other party.